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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	Case No. 1:07-cr-00007-2
Plaintiff,	Chicago, Illinois
	November 16, 2009
v.	Sentencing

VERNON WILLIAMS,  
Defendant.

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TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE VIRGINIA M. KENDALL  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	Office of the U.S. Attorney
	By: Stephen A. Kubiowski
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**Proceedings recorded by mechanical stenography; transcript  
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**I N D E X**

**DESCRIPTION**

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**SENTENCING**

**31**

03:10:42 1 (Commenced at 3:10 p.m.)

03:10:42 2 THE CLERK: 07CR7, defendant number 2, USA versus

03:10:49 3 Vernon Williams.

03:10:49 4 MR. KUBIATOWSKI: Good afternoon, your Honor. Steve

03:10:51 5 Kubiatsowski representing the United States.

03:10:51 6 THE COURT: Good afternoon.

03:10:52 7 MR. LIPUMA: Good afternoon, your Honor. Frank

03:10:55 8 Lipuma on behalf of Vernon Williams, who is present before the

03:10:57 9 Court.

03:10:57 10 THE COURT: Good afternoon, Mr. Lipuma.

03:10:58 11 Good afternoon, Mr. Williams.

03:11:00 12 THE DEFENDANT: Good afternoon.

03:11:01 13 THE COURT: You may sit, feel free to sit while we're

03:11:03 14 doing this.

03:11:03 15 All right. Did everyone receive a copy of the

03:11:05 16 Presentence Investigation Report?

03:11:06 17 MR. LIPUMA: Yes, your Honor.

03:11:08 18 MR. KUBIATOWSKI: Yes, your Honor.

03:11:09 19 THE COURT: Mr. Kubiatsowski, do you have any factual

03:11:11 20 changes?

03:11:13 21 MR. KUBIATOWSKI: No, your Honor.

03:11:13 22 THE COURT: All right. I know you do, Mr. Lewis. So

03:11:14 23 let's go through those and see if we can get them corrected.

03:11:17 24 You stated that on page 4, line 3, that he was taken

03:11:26 25 into custody on January 4th. Do you have any reason to

03:11:29 1 challenge that, Mr. Kubiowski?

03:11:31 2 MR. KUBIATOWSKI: No, your Honor.

03:11:32 3 THE COURT: Okay. So we'll make a change to that,  
03:11:35 4 that'll be January 4th.

03:11:37 5 Then on page 5, at line 49, Mr. Williams wasn't  
03:11:49 6 present at that meeting.

03:11:50 7 MR. KUBIATOWSKI: That's correct, your Honor.

03:11:52 8 THE COURT: Okay. So --

03:11:54 9 MS. GROTH: That should be a reference to Scott  
03:11:56 10 Lewis, your Honor. That was an error.

03:11:58 11 THE COURT: Okay. So let's --

03:11:58 12 MS. GROTH: The defendant it should be --

03:12:00 13 THE COURT: Okay. Let's say defendant Scott Lewis  
03:12:02 14 agreed. Is that okay?

03:12:05 15 MS. GROTH: Yes.

03:12:05 16 THE COURT: All right. And then page 8, line 134, so  
03:12:21 17 you're saying the word carry or possession should replace the  
03:12:24 18 word use.

03:12:26 19 MR. LIPUMA: Yes, Judge. That was what was charged  
03:12:28 20 in the indictment. It's a small matter, but the gun wasn't  
03:12:31 21 used, nor was it charged as having been used, but it was  
03:12:34 22 charged as having been possessed or carried.

03:12:36 23 THE COURT: Was the language of the indictment such  
03:12:40 24 that it said possession or carrying of a firearm?

03:12:41 25 MR. KUBIATOWSKI: That's correct, your Honor, and the

03:12:43 1 instructions also reflected that.

03:12:44 2 THE COURT: Okay. Let's just change that to be  
03:12:47 3 careful. So use will be changed to possession or carrying of  
03:12:50 4 a firearm.

03:12:51 5 And then if you could just make those changes, I  
03:12:54 6 don't need a new copy to review, but just make those  
03:12:56 7 clarifications. Okay.

03:12:58 8 MS. GROTH: Will do, your Honor.

03:12:59 9 THE COURT: Okay. Thank you.

03:12:59 10 All right. Now, the sentencing guideline  
03:13:02 11 calculations, we have a base offense level of 34, based upon  
03:13:10 12 15 to 20 kilograms of cocaine. And I know that you,  
03:13:19 13 Mr. Lipuma, recognize that the challenge to that is difficult,  
03:13:23 14 because the case law is such that if they agreed to enter into  
03:13:32 15 a robbery that would be for that amount, that you recognize  
03:13:34 16 the case law says that that would be the amount. But do you  
03:13:37 17 have something that you want to add to that?

03:13:39 18 MR. LIPUMA: Judge, just very briefly, in addition to  
03:13:43 19 what Mr. Cheronis said with respect to Mr. Scott Lewis'  
03:13:45 20 sentencing, this base offense level of 34, again, this is --  
03:13:53 21 Mr. Kubiowski pointed out that Scott Lewis admitted in his  
03:13:56 22 post-arrest statement after being arrested in this case that  
03:13:58 23 he expected 15 or 20 or more kilograms. So that was one of  
03:14:02 24 the bases and, I think, the primary basis the Court relied on.

03:14:04 25 But the Court also indicated Mr. Kubiowski pointed

03:14:08 1 out that there was some discussion about 20 kilos in various  
03:14:10 2 transcripts, and certainly that's the case. I guess my  
03:14:12 3 problem with this is a little bit further than what  
03:14:17 4 Mr. Cheronis said. And that's when the agents, when they're  
03:14:19 5 sitting determining what amount they're going to say is  
03:14:22 6 involved in this fictitious scenario can pick out any number.

03:14:26 7 So why doesn't Agent Gomez say five kilograms?  
03:14:29 8 Wouldn't that have piqued Mr. Williams' interest and  
03:14:34 9 Mr. Lewis' interest? Why did it have to be 20 or 25  
03:14:37 10 kilograms? Why did this have to be more? Why couldn't it be  
03:14:39 11 150 kilograms?

03:14:40 12 So my problem with this -- and I know the case law is  
03:14:43 13 against us, Judge, as Mr. Kubiowski pointed out, and the  
03:14:46 14 guidelines, and we acknowledged in our sentencing memorandum  
03:14:48 15 that case law is against us. However, it just allows the ATF  
03:14:54 16 agents to drive the sentencing range in this case with no  
03:14:57 17 regard for what the Court's consideration may be in terms of  
03:14:59 18 the initial calculations under the guidelines. And I stated  
03:15:02 19 enough of that, I've laid it out in our sentencing memorandum.

03:15:05 20 And I just would point out -- and one further thing.  
03:15:09 21 In addition to the vagueness with respect to what was stated  
03:15:12 22 on the tapes, it was odd that the jury a week later in Lavoyce  
03:15:17 23 Billingsley's sentencing [sic] could come back and say, No,  
03:15:20 24 there was not -- we can't agree that there's five or more  
03:15:23 25 kilograms. We find it's just a measurable amount, or maybe it

03:15:26 1 was 500 grams. I'm not exactly sure. But it was certainly  
03:15:29 2 different than what the jury found in this case. And I would  
03:15:31 3 submit that if they do ten juries, those juries could be  
03:15:34 4 inconsistent as well.

03:15:35 5 So I understand the Court's going to rule against us  
03:15:37 6 and be consistent with how it found for Scott Lewis, but I  
03:15:41 7 would just like to make that point for the record.

03:15:43 8 THE COURT: Well, we did just have Mr. Lewis'  
03:15:46 9 sentencing, Mr. Williams, and one of the things that we  
03:15:51 10 reviewed were the transcripts that Mr. Kubiowski brought  
03:15:54 11 from the December 15th meeting, during which at lines 82 to 83  
03:16:01 12 the informant talked about usually seeing 20 kilograms;

03:16:05 13 And at lines 92 to 93, I mean, I'm talking 20 kilos;  
03:16:09 14 And then at line 299 that, I hit this place for 20  
03:16:13 15 kilos;

03:16:13 16 And then again three days later that at line 169, I  
03:16:18 17 usually see 20 kilos. I usually see them cutting 20 kilos.

03:16:22 18 So the question for the Court is what was that  
03:16:27 19 agreement as far as the robbery into that stash house. And  
03:16:31 20 that robbery, according to the person who made the agreement  
03:16:35 21 in the first place, was at least 15 kilos. It was a  
03:16:40 22 15-to-20-kilo robbery. And, therefore, the evidence that was  
03:16:44 23 presented to the jury was that it was for an approximate  
03:16:48 24 20-kilo robbery, and I think that's corroborated by the  
03:16:53 25 post-arrest statement of your codefendant. And, therefore,



03:16:56 1 the Court finds that it is the 15-to-20 kilo amount, which is  
03:17:01 2 a level 34.

03:17:03 3 So then we move on to an adjustment for role in the  
03:17:08 4 offense. There is no adjustment, based upon the fact that you  
03:17:10 5 were recruited by Mr. Lewis.

03:17:12 6 And then we go to the firearm -- the use of the  
03:17:15 7 firearm in the drug trafficking offense, which is the  
03:17:18 8 conviction carries a 60-month mandatory sentence to run  
03:17:22 9 consecutive to the first count.

03:17:24 10 And then the final one that's mentioned in the  
03:17:33 11 probation officer's report is whether a career offender  
03:17:37 12 analysis applies.

03:17:37 13 Does anyone want to address that or is everyone in  
03:17:40 14 agreement that the career offender is not applicable here to  
03:17:44 15 the defendant?

03:17:45 16 MR. KUBIATOWSKI: Your Honor, I think one of  
03:17:48 17 Mr. Lipuma's objections was minor role. I think both parties  
03:17:52 18 agree there's no role enhancement, but he is arguing for a --

03:17:55 19 THE COURT: Okay.

03:17:55 20 MR. KUBIATOWSKI: -- minor role.

03:17:57 21 THE COURT: Okay. All right. Go ahead.

03:17:58 22 MR. LIPUMA: Yes, Judge. I sincerely believe that a  
03:18:01 23 minor role adjustment of two levels is appropriate here under  
03:18:04 24 the totality of the circumstances. And the standard is is  
03:18:08 25 Mr. Williams less culpable than most other participants.

03:18:11 1 Well, the probation officer and the Government have  
03:18:13 2 suggested and the Court has found that Scott Lewis had an  
03:18:16 3 aggravating role in the offense, so we're even right there.

03:18:19 4 And I guess it's our burden to prove then whether  
03:18:23 5 Vernon Williams is less culpable than Lavoyce Billingsley.  
03:18:27 6 And we would suggest that he clearly is less culpable than  
03:18:31 7 Lavoyce Billingsley, because the primary reasoning is Lavoyce  
03:18:34 8 Billingsley is the person who brought the gun on January 4th.  
03:18:38 9 He's also the one who brought the ammo, which was in his car.  
03:18:41 10 So the vehicle that was going to be used, the gun that was  
03:18:45 11 going to be used, the ammunition that supposedly was going to  
03:18:49 12 be used was all brought by Lavoyce Billingsley at the  
03:18:52 13 suggestion of Scott Lewis.

03:18:55 14 What is common between Vernon Williams and Lavoyce  
03:19:01 15 Billingsley is only that, according to the jury's verdict,  
03:19:04 16 Judge, they had the same agreement. We don't necessarily  
03:19:07 17 agree with the jury's verdict, but they did agree, so they  
03:19:11 18 both presumably expressed words of agreement. But that is  
03:19:15 19 where the similarity ends, Judge.

03:19:17 20 Vernon Williams basically says, let's break it down  
03:19:20 21 to, I agree to be in this crime. Lavoyce Billingsley says, I  
03:19:23 22 agree to be in this crime. Both are convicted on Count 1.  
03:19:27 23 And what's the critical distinction between those two fellows?  
03:19:32 24 Lavoyce Billingsley's got the gun. Scott Lewis is running the  
03:19:35 25 show, making the plans on how to commit this robbery.

03:19:40 1 And I think the Court also will recall that on those  
03:19:43 2 tapes when Mr. Williams is present, on December 18th, Rojo,  
03:19:48 3 the CI, and the agent are basically saying, Bring your big  
03:19:52 4 artillery, bring your little artillery, bring any artillery.  
03:19:57 5 And what does Vernon Williams bring? No -- no artillery. No  
03:20:02 6 guns, no weapons whatsoever. So, to me, it's a pretty  
03:20:05 7 fundamental and obvious distinction in the roles in the  
03:20:06 8 offense here.

03:20:06 9 Scott Lewis has obviously got an aggravating role.  
03:20:09 10 He's leading this. The Court has so found. We can't  
03:20:12 11 necessarily disagree with that.

03:20:13 12 And then we look at the other two participants,  
03:20:16 13 Lavoyce Billingsley and Vernon Williams. They're similar in  
03:20:20 14 that they both agreed to commit the crime, according to the  
03:20:23 15 jury's verdict. But there is a distinct difference in that  
03:20:25 16 Lavoyce Billingsley is the one who brings the gun. So,  
03:20:29 17 therefore, we think two levels would apply, your Honor.

03:20:31 18 THE COURT: And you're seeking a minor participant  
03:20:33 19 under section B -- subsection B, not a minimal participant,  
03:20:37 20 correct?

03:20:37 21 MR. LIPUMA: Correct, your Honor.

03:20:38 22 THE COURT: Okay. Mr. Kubiowski?

03:20:39 23 MR. KUBIATOWSKI: Your Honor, the touchstone is not  
03:20:41 24 how he compares to Mr. Billingsley. The touchstone, under the  
03:20:44 25 Seventh Circuit, is whether or not he played a central role,

03:20:49 1 an integral role in the conspiracy. And, here, even though he  
03:20:52 2 didn't bring a firearm, he still played an integral role in  
03:20:57 3 the conspiracy.

03:20:57 4 We know, based on his words at the December 18th  
03:21:01 5 meeting, that he intended to be the first one to rush the  
03:21:04 6 stash house, that he intended to ransack the place along with  
03:21:09 7 the other coconspirators, that he was onboard with stripping  
03:21:14 8 those occupants naked and tieing them up.

03:21:17 9 He was certainly not less culpable than the other  
03:21:22 10 defendants. We're not saying that he was a manager or  
03:21:26 11 supervisor; that was Scott Lewis. But certainly his role  
03:21:28 12 cannot be described as minimal here.

03:21:31 13 His role was on par with that of Mr. Billingsley, and  
03:21:35 14 he certainly played an integral role in the planning of this  
03:21:38 15 conspiracy and in the plans to execute it.

03:21:41 16 THE COURT: I think the problem that I have with the  
03:21:44 17 role reduction here is that unlike other cases that I look at  
03:21:51 18 from the Seventh Circuit regarding where one is less culpable  
03:21:56 19 than most other participants but whose role could not be  
03:21:59 20 described as minimal, generally we're looking at a role that  
03:22:05 21 is different from the other participants. And, yes, you can  
03:22:08 22 distinguish it that one created the actual robbery team, which  
03:22:15 23 is Lewis, and that the other brought the weapon, and so he's  
03:22:18 24 distinctive.

03:22:19 25 But his role once the robbery was to take place was

03:22:22 1 to be a part of the team. So I don't find that he has a less  
03:22:27 2 significant role and, therefore, I'm not going to give him the  
03:22:30 3 minor participant. So he remains at a level 34.

03:22:35 4 And his criminal history is set forth starting on  
03:22:40 5 page 11 where we start to begin with the points. He's at a  
03:22:46 6 level 5, correct?

03:22:49 7 MR. LIPUMA: Yes, your Honor.

03:22:50 8 MR. KUBIATOWSKI: That's correct, your Honor.

03:22:51 9 THE COURT: And that's based on three points for the  
03:22:53 10 burglary conviction when he was 29, and then the three points  
03:22:58 11 for another burglary conviction when he was 33, and the three  
03:23:08 12 points for the forgery conviction. Oh, and then he was on  
03:23:25 13 parole, is that correct, at the time? So he gets the  
03:23:27 14 increase --

03:23:28 15 MR. LIPUMA: Yes, your Honor.

03:23:29 16 THE COURT: -- of the two points for that.

03:23:31 17 But why am I coming up with 11 and not 12? Because  
03:23:38 18 the --

03:23:38 19 MR. LIPUMA: I think there's that extra point, Judge,  
03:23:40 20 for within so many years.

03:23:41 21 THE COURT: Oh, it was committed within two years of  
03:23:44 22 the offense.

03:23:44 23 Okay. So do you have a position regarding his  
03:23:46 24 criminal history, Mr. Lipuma?

03:23:48 25 MR. LIPUMA: Judge, we have no objections to the

03:23:50 1 officer's calculations.

03:23:51 2 THE COURT: Okay. So he is at a category V and a  
03:23:56 3 level 34.

03:23:57 4 Is there anything else regarding the guidelines that  
03:24:00 5 anyone wants to address?

03:24:02 6 MR. LIPUMA: I don't think we have any other issues  
03:24:04 7 with respect to the guidelines, Judge.

03:24:06 8 THE COURT: All right. So category IV -- excuse  
03:24:10 9 me -- V at a level 34 is 235 to 293 months.

03:24:21 10 Now, based upon the 3553 factors, let me hear first  
03:24:25 11 from the Government.

03:24:30 12 MR. KUBIATOWSKI: Your Honor, the seriousness of the  
03:24:33 13 offense here is that it involved a planned robbery of a drug  
03:24:39 14 stash house where the defendant and his coconspirators would  
03:24:44 15 forcibly subdue the occupants of that stash house, presumably  
03:24:49 16 at gunpoint -- at least that's what was discussed during the  
03:24:52 17 conversations -- that they would be tied up, and at that point  
03:24:55 18 they'd break away with 20 kilograms of cocaine -- cocaine  
03:24:59 19 worth over \$400,000, on the assumption that each kilo is worth  
03:25:04 20 approximately \$20,000.

03:25:06 21 The defendant, as far as personal history, has two  
03:25:12 22 recent burglary convictions and committed the instant offense  
03:25:16 23 while he was on parole, less than two years after he got out  
03:25:20 24 of prison.

03:25:21 25 He has an extensive criminal background that predates

03:25:27 1 that, a lot of which did not count, but nevertheless -- and  
03:25:29 2 none of which involved violent offenses or narcotics offenses,  
03:25:33 3 but nonetheless his category V fairly represents his criminal  
03:25:42 4 history.

03:25:42 5 In his conversations, he talked about how he was  
03:25:49 6 going to get the money off a brick and even though he  
03:25:55 7 didn't -- has no previous narcotics convictions, he certainly  
03:25:58 8 talked as if he knew the drug lingo.

03:26:06 9 As far as his personal characteristics, we've already  
03:26:10 10 discussed his criminal history and the fact that, you know, at  
03:26:16 11 an adult age, 29 and 33, he has criminal convictions for  
03:26:19 12 burglary and committed the instant offense after being --  
03:26:24 13 while being on parole and after being released.

03:26:28 14 In this instance, your Honor, I think a message needs  
03:26:32 15 to be sent, given his history of recidivating, that he has to  
03:26:39 16 clean up his act. And unfortunately in this case the  
03:26:42 17 guidelines are significant, but we believe that they're  
03:26:47 18 appropriately calculated and the guideline sentence,  
03:26:50 19 accordingly, is what we will recommend.

03:26:51 20 THE COURT: Okay. And he's how old now, 42? Is that  
03:26:58 21 right?

03:26:58 22 MR. LIPUMA: 41. It's 41, your Honor.

03:27:00 23 THE COURT: 41. Okay.

03:27:02 24 All right. And so you want a guideline sentence and  
03:27:05 25 then followed by the 60 months, right?

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MR. KUBIATOWSKI: That's correct, your Honor.

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THE COURT: Okay. All right. Mr. Lipuma?

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MR. LIPUMA: Thank you, Judge Kendal1.

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Judge, on Count 1 there's a statutory mandatory

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minimum of ten years, and on Count 3 there's a statutory

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mandatory minimum of 60 consecutive months. Count 2 we won,

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the attempt charge. The jury basically said, On January 4th

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when these guys showed up and they got arrested, they were not

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ready. They did not take a substantial step to commit this

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crime.

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Our position, Judge, is that fifteen years, ten plus

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five, is reasonable and fair under all the circumstances and

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the evidence that the Court heard in this case, and especially

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under the 3553 factors, Judge, which would indicate that a

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fifteen-year sentence would be sufficient but not greater than

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necessary to comport with the various sentencing goals, which

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the Court is well aware of.

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Judge, you -- Mr. Cheronis covered a lot of ground,

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and I'm just going to briefly cover some of the same

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guideposts along the way. I do wonder where Vernon Williams

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would have been if ATF didn't manufacture these crimes.

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Perhaps he would have found himself in some other type of

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crime. But the bottom line here is ATF manufactured these

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crimes. ATF created these crimes and they lured Vernon

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Williams into committing them.



03:28:20 1 The Court commented and we put it in our sentencing  
03:28:22 2 memorandum, Judge, the Seventh Circuit commented on these ATF  
03:28:26 3 fictitious stash house robbery plots. And I consider it quite  
03:28:30 4 a condemnation for the Seventh Circuit to begin its opinion in  
03:28:34 5 the Corson case with this language: If judges sat in a  
03:28:38 6 policymaking role, perhaps we might have reason to wonder  
03:28:41 7 whether this scheme was the right use of law enforcement  
03:28:44 8 resources. That's in the Corson case, Judge. That's the same  
03:28:48 9 ATF scenario that's present in this case, and, in fact, it's  
03:28:51 10 the same undercover agent, Agent Gomez, who was used in that  
03:28:55 11 case as in this case, Judge.

03:28:56 12 I was the trial attorney or one of the trial  
03:28:59 13 attorneys in the Corson case before Judge Pallmeyer. I had  
03:29:02 14 the opportunity to cross-examine Agent Gomez before, and I  
03:29:05 15 found his testimony to be incredible in that trial, and I  
03:29:10 16 found it to be a fiasco in this trial --

03:29:13 17 THE COURT: But the jury did accept it. And did they  
03:29:17 18 accept it in the other trial as well?

03:29:19 19 MR. LIPUMA: They did accept it. Although I think  
03:29:22 20 his testimony and the law enforcement operations were a little  
03:29:25 21 bit more, in my view respectfully -- and the jury did convict  
03:29:29 22 my client -- but they were outrageous, Judge.

03:29:32 23 THE COURT: In one of the -- I made this point in the  
03:29:35 24 previous sentencing, and I think it's an important one, which  
03:29:40 25 is that both you and Mr. Cheronis very effectively

03:29:44 1 cross-examined the agent and did highlight those problems with  
03:29:48 2 the investigation. And so the jury essentially had at their  
03:29:57 3 review, during their review in that jury room, the  
03:30:02 4 cross-examination that highlighted those points, and they came  
03:30:05 5 to the conclusion to convict regardless.

03:30:07 6 So they reached a conclusion that was consistent with  
03:30:16 7 law enforcement behavior that at least brought a conviction as  
03:30:19 8 opposed to one that should have led to an entrapment acquittal  
03:30:24 9 or to an insufficiency of evidence acquittal. So I think we  
03:30:28 10 have to respect that, in light of the fact that the Court has  
03:30:32 11 commented on it as well as you and others.

03:30:36 12 MR. LIPUMA: Yes.

03:30:36 13 THE COURT: All right.

03:30:38 14 MR. LIPUMA: Yes, Judge. Certainly, we do respect  
03:30:40 15 the jury's verdict. We do anticipate appealing, and we might  
03:30:44 16 not get anywhere with Count 1, but I would suggest on Count 3,  
03:30:48 17 the only testimony -- the only evidence was Agent Gomez's.  
03:30:51 18 And I personally think that that is grounds for a decent  
03:30:56 19 appeal. I think the evidence was insufficient on Count 3.  
03:30:58 20 But regardless, Judge, that's for another day.

03:31:00 21 Mr. Vernon Williams showed up at this purported  
03:31:04 22 robbery without a gun, without a weapon. Aaron Corson was the  
03:31:08 23 client who I represented in front of Judge Pallmeyer, also did  
03:31:11 24 not have a gun or a weapon.

03:31:12 25 He was at one point considered to be a career

03:31:14 1 offender. We were able to show the Court that he wasn't. But  
03:31:17 2 his range still was up there, 25, 30 years, and that's what  
03:31:20 3 the Government was suggesting. And Judge Pallmeyer said, No,  
03:31:23 4 she did not sentence him to that. She went down and sentenced  
03:31:27 5 Aaron Corson to sixteen years, quite a similar -- almost an  
03:31:29 6 exact scenario as this case, Judge, between the two.

03:31:33 7 So I would respectfully suggest that Judge Pallmeyer  
03:31:36 8 also, quite like the Seventh Circuit panel that wrote the  
03:31:39 9 condemning opinion recently in the Corson case, likewise found  
03:31:45 10 some type of problem with this prosecution, particularly,  
03:31:54 11 Judge, when it's presented in such a fashion that the ATF is  
03:31:55 12 targeting professional crews.

03:31:57 13 Judge, I would submit this is the furthest thing from  
03:32:01 14 a professional crew that one would ever find. Mr. Cheronis  
03:32:05 15 brought up the Three Stooges and Mr. Kubiowski took offense  
03:32:08 16 to that, but the fact of the matter is it was the CI, Rojo, at  
03:32:12 17 the December 15th or 18th meeting who brought up the Three  
03:32:16 18 Stooges, because Scott Lewis couldn't come up with a game  
03:32:18 19 plan. So they were suggesting game plans to him. And  
03:32:21 20 ultimately he said, Oh, we can pretend we're the police. And  
03:32:25 21 Rojo said, You got to get your story straight because you  
03:32:28 22 don't want to look like the Three Stooges. And that's  
03:32:30 23 precisely what this group was.

03:32:32 24 Fifteen years, Judge, is an extremely long period of  
03:32:35 25 time, especially in the federal system where you do the bulk

03:32:37 1 of your time and you get very little credit, especially in a  
03:32:40 2 prison where he's going, which will probably be maximum  
03:32:46 3 security.

03:32:46 4 What did Vernon Williams do, Judge? He met on  
03:32:50 5 December 18th -- and this is captured on tape -- for a handful  
03:32:54 6 of minutes and he uttered a handful of words, basically  
03:32:59 7 agreeing to the concept of committing this crime, according to  
03:33:03 8 the jury's verdict.

03:33:04 9 He did not ever possess a gun. And the evidence  
03:33:08 10 would suggest, Judge, that he was either unable or unwilling  
03:33:12 11 to obtain a gun. As we know, he has no gun use in his  
03:33:16 12 background. Fifteen years for a few words, Judge, I would  
03:33:20 13 submit, is pretty harsh.

03:33:23 14 These are 3553 nature and circumstances of the  
03:33:27 15 offense issues, the factors the Court must consider. And we  
03:33:34 16 have to look at what Vernon did.

03:33:38 17 Vernon did not think up this crime, Judge. ATF did.  
03:33:42 18 ATF solicited Vernon Williams. Apparently Scott Lewis  
03:33:43 19 recruited him in, based on the Court's finding, but ATF then  
03:33:47 20 gave him the story line and he apparently agreed.

03:33:50 21 As the Court is obviously well aware, there was no  
03:33:53 22 cocaine. There was no robbery. Of course, Vernon Williams  
03:33:58 23 did not have a gun or a weapon of any sort, Judge. And I  
03:34:02 24 already told you, they kept pressing him. Bring your big  
03:34:05 25 artillery, bring your biggest artillery for this. And, of

03:34:09 1 course, he couldn't get his hands on anything or he didn't  
03:34:11 2 want to get his hands on anything, because he showed up with  
03:34:14 3 nothing.

03:34:14 4 This professional crew I'm going back to one more  
03:34:16 5 time. You may remember the tape. Mr. Cheronis didn't bring  
03:34:20 6 this up, but you may remember the tape, Judge, between  
03:34:22 7 Christmas and New Year's where Scott Lewis says to Gomez, Can  
03:34:26 8 you get a gun? Because I'm having trouble getting a gun.  
03:34:30 9 This is hardly the professional crew that ATF supposedly  
03:34:33 10 targets and that Gomez supposedly investigates.

03:34:38 11 A problem I had with Gomez, Judge, and there are  
03:34:41 12 many, but you remember the December 18th meeting which was  
03:34:43 13 videotaped. And he turns around and says, You guys have done  
03:34:46 14 this type of thing before? And you can clearly see Vernon  
03:34:51 15 Williams' going his head side to side saying, No. And yet he  
03:34:55 16 testified that he construed that as, Yes, that that's exactly  
03:34:58 17 what he said.

03:34:59 18 I suggest that Gomez did whatever he could to convict  
03:35:02 19 these guys, to get these guys prosecuted and said whatever he  
03:35:06 20 could to get the jury to convict.

03:35:10 21 I will briefly cover the strangeness of only using  
03:35:14 22 one recording device when ATF policy and his prior practice  
03:35:18 23 was to use two. The fact that on January 4th the device  
03:35:23 24 malfunctioned, the only device malfunctioned, and then later  
03:35:26 25 when these guys were thrown into what some people refer as a

03:35:30 1 paddywagon -- of course, I don't refer to it as a  
03:35:34 2 paddywagon -- but that that device that was put in that  
03:35:38 3 vehicle also malfunctioned.

03:35:40 4 He also said he didn't learn about the malfunctioning  
03:35:44 5 device for weeks, your Honor, and -- which was contrary to his  
03:35:46 6 practice. And then for several weeks after that -- I think it  
03:35:49 7 was seven weeks, Judge -- he didn't tell a colleague, not even  
03:35:52 8 Agent Wilson, who's in the cubicle next to him who is the  
03:35:55 9 co-case agent on the case. He didn't tell any of his  
03:35:59 10 supervisors about this malfunctioning device.

03:36:01 11 And what happens in the interim? Agent Wilson goes  
03:36:05 12 in the grand jury and testifies falsely saying that the  
03:36:09 13 recording -- that this was recorded and this is what the  
03:36:12 14 recording device shows.

03:36:13 15 So, of course, he didn't do it intentionally. But if  
03:36:16 16 Gomez had been diligent, this agent would have known to  
03:36:19 17 testify truthfully rather than falsely, because he was not  
03:36:23 18 given adequate information.

03:36:25 19 Gomez said that he submitted this device to a  
03:36:28 20 company, however, he could not recall the name of the company.  
03:36:30 21 There's no notes of this company. There's no reports about  
03:36:33 22 this at all.

03:36:34 23 And, of course, we had the improper chain of custody  
03:36:37 24 as well. And, Judge, I would suggest that something happened  
03:36:39 25 on January 4th, something happened, and I would -- I'm sure

03:36:44 1 the Court -- I can't say speak for the Court.

03:36:47 2 But something happened on January 4th that Agent  
03:36:50 3 Gomez did not like, and that was the day when all the agents  
03:36:53 4 and SRT agents, everyone's set up to break these guys down and  
03:36:57 5 conduct this arrest. On that day, as the jury clearly found,  
03:37:02 6 Vernon Williams was not prepared to commit a crime.

03:37:07 7 They're supposed to go and ambush three violent,  
03:37:09 8 armed, Mexican drug cartel members who are guarding, you know,  
03:37:14 9 practically street value millions of dollars worth of cocaine,  
03:37:17 10 and the only one who has a gun is Billingsley.

03:37:21 11 Vernon has nothing. He doesn't have a gun. He has  
03:37:24 12 no restraints. There's no rope. There's no duct tape.  
03:37:27 13 There's no body armor. There's no protection for him.

03:37:33 14 The nature and circumstance of the offense also  
03:37:36 15 shows, Judge, that all we have is the handful of minutes on  
03:37:39 16 December 18th where he utters a few words, possibly of  
03:37:42 17 agreement, according to the jury's verdict, and the  
03:37:45 18 January 4th meeting where they meet for a handful of minutes.

03:37:48 19 There's no telephone calls from the undercover agent  
03:37:52 20 to Vernon Williams, nor from Vernon Williams to the undercover  
03:37:56 21 agent. There's no telephone calls from Vernon Williams to the  
03:37:59 22 informant or from the informant to Vernon Williams.

03:38:05 23 It's Lavoyce Billingsley's gun. I know the Court  
03:38:08 24 found that, you know, we're all responsible for it and the  
03:38:11 25 jury's verdict has to be respected. Let's look at that gun.



03:38:15 1 It was not in proper functioning order. The slide had to be  
03:38:19 2 manually manipulated. That doesn't mean it didn't operate,  
03:38:22 3 but it wasn't -- it would malfunction if it wasn't properly  
03:38:27 4 used. And only Lavoyce -- as the prosecutor indicated, only  
03:38:31 5 Lavoyce Billingsley knew that. Vernon Williams didn't know  
03:38:33 6 that, Judge.

03:38:34 7 Who is Vernon Williams? We know the circumstances of  
03:38:37 8 his offense. Now who is he? He's a person who's doing life  
03:38:41 9 on the installment plan. A little bit here, a few years  
03:38:44 10 there, a few years here, he gets out, and he gets brought into  
03:38:48 11 this. That's his history and characteristics.

03:38:50 12 But if we look at his criminal history, Judge, we see  
03:38:53 13 that Vernon Williams is not a violent person. His criminal  
03:38:56 14 history does not include violence. It does not include drug  
03:39:00 15 use. A couple of the burglaries are of stores, Judge, past  
03:39:05 16 hours where the alarm goes off and the police find him hiding  
03:39:10 17 in the basement.

03:39:11 18 He does have some drug possession arrests, Judge, but  
03:39:14 19 he doesn't have any drug dealing convictions or arrests. He  
03:39:18 20 has no robberies in his background, exactly contrary to what  
03:39:23 21 the object of this purported conspiracy was, a violent  
03:39:27 22 overtake of violent and armed cartel members. They don't  
03:39:32 23 have -- he doesn't have that in his background, your Honor.

03:39:35 24 What he has in his background is a mess of a life  
03:39:40 25 that's been poisoned by drug use and alcohol abuse. And that



03:39:48 1 stems from, as the PSR reflects and as our sentencing  
03:39:53 2 memorandum discusses, Judge, a pretty terrible upbringing any  
03:39:58 3 way you look at it.

03:39:58 4 He did not know his natural father. He was  
03:40:02 5 physically and mentally abused by his stepfather for about  
03:40:06 6 five years, where he was beaten repeatedly with many types of  
03:40:10 7 objects, where he was locked in a closet regularly for hours  
03:40:14 8 into days, and where he was deprived of food and a toilet.  
03:40:19 9 And the probation officer was too professional to put it in  
03:40:24 10 her report, but basically he had to go in a can when he was  
03:40:31 11 locked in the closet for days.

03:40:34 12 He ultimately was placed in foster care, and then was  
03:40:37 13 placed with other family members. But while he was in foster  
03:40:40 14 care at the age of nine, he was given the opportunity to smoke  
03:40:44 15 marijuana, and he started using marijuana regularly. He had  
03:40:48 16 daily drug and alcohol use by the age of thirteen. At  
03:40:52 17 fourteen to sixteen he had regular use of cocaine, which led  
03:40:55 18 to a crack cocaine addiction.

03:41:00 19 He has to be held responsible for these crimes. We  
03:41:04 20 recognize that. But the Court may consider this upbringing  
03:41:08 21 and his drug use. And when he was arrested in this case,  
03:41:12 22 Judge, he tested positive for drugs. He used it on a daily  
03:41:16 23 basis. Does that excuse his actions? Of course, it doesn't.

03:41:20 24 I'd ask the Court to also consider his physical  
03:41:23 25 condition. The BOP has classified him as disabled. He

03:41:29 1 certainly isn't likely to engage in any robberies of  
03:41:34 2 fictitious or real stash houses upon his release from prison.

03:41:37 3 THE COURT: As totally disabled, is what --

03:41:40 4 MR. LIPUMA: Yes, your Honor.

03:41:42 5 THE COURT: -- is what the classification is.

03:41:43 6 MR. LIPUMA: Yes, that's true.

03:41:44 7 And I would also point out, Judge, that while he's at  
03:41:47 8 the MCC, he has been productive and he has been positive. We  
03:41:51 9 tendered to the Court some 26 certificates of either  
03:41:54 10 achievement or participation or completion. Seven from the  
03:41:57 11 MCC dealing with continuing education classes and victim  
03:42:02 12 impact seminars, and nineteen others where he has been active  
03:42:05 13 in studying religion and scripture.

03:42:08 14 His goal, as I can tell -- as far as I can tell,  
03:42:11 15 Judge, is one of sobriety and changing his lifestyle. I look  
03:42:16 16 around this courtroom and I see nobody for Vernon Williams.

03:42:21 17 I know he has, I guess, what would be described as a  
03:42:25 18 common law wife, who I've talked to many times, and I know  
03:42:28 19 they have two daughters together. And I know he loves his  
03:42:31 20 daughters very much. He's showed me pictures of them. He  
03:42:35 21 stays in contact with them. However, the mother has gone on  
03:42:39 22 with another man, either they've been married or they're  
03:42:43 23 together now, so obviously there's some problems there. But  
03:42:45 24 he does love his children and he was good to his children.  
03:42:48 25 And I can't turn to anybody in the courtroom, like I usually

03:42:50 1 do, and say, Look at all the support he has, nor can I go to  
03:42:53 2 the Court and say, Look at all the letters in support you have  
03:42:56 3 from his friends.

03:42:57 4 But does that mean he's not a human being? Does that  
03:43:01 5 mean he's a piece of garbage that we just throw in prison with  
03:43:04 6 the other animals and let him sort it out himself? I would  
03:43:10 7 respectfully suggest no, Judge. I respectfully suggest that  
03:43:12 8 fifteen years is a lot of time in this case, and he should get  
03:43:15 9 treatment in Bureau of Prisons. He should be part of the  
03:43:18 10 residential drug abuse program, but he won't even get the  
03:43:21 11 benefit of the one-year reduction because he's got the 924(c),  
03:43:26 12 the firearm charge. But he still wants to go through that  
03:43:30 13 program, regardless of the fact that he's not going to be  
03:43:33 14 rewarded for it in terms of a year off his sentence. He knows  
03:43:37 15 he's still going to be rewarded for it, because he's going to  
03:43:40 16 have to come back out into society and he's going to have to  
03:43:42 17 get his act together. Otherwise the installment -- doing life  
03:43:46 18 on the installment plan will continue.

03:43:49 19 And from what I've known of him, the times I've spent  
03:43:52 20 with him, he's never had a harsh word for anybody. He's never  
03:43:57 21 raised his voice. I don't -- I probably have used a few cuss  
03:44:01 22 words in his presence. I don't remember him using any cuss  
03:44:04 23 words. And he's -- what he's done in this predicament is stay  
03:44:09 24 active in the MCC. What he's done is read and be involved in  
03:44:13 25 the program, the limited programs that are offered.

03:44:15 1 And I'll tell you, this is one of those guys who  
03:44:17 2 studies the law and calls me, Have you ever read this case?  
03:44:20 3 Have you read this case? Yes, I've read that case, Vernon. I  
03:44:22 4 know what you're talking about. He's active. He's got a  
03:44:25 5 mind.

03:44:25 6 I think he has potential to get out, Judge, and get a  
03:44:29 7 labor man's job, do something hard, hard physical labor, if he  
03:44:34 8 can considering his leg situation.

03:44:40 9 You indicate --

03:44:41 10 THE COURT: Was there gang involvement?

03:44:43 11 MR. LIPUMA: Oh, no, Judge. No -- here, I'll take  
03:44:45 12 that back.

03:44:45 13 No, Judge, in his life he's never -- he was born in a  
03:44:49 14 neighborhood where there were gangs, and I think, as he  
03:44:52 15 explained to the probation officer, he was born in the  
03:44:55 16 neighborhood that on one street had one gang, on the next  
03:44:58 17 street had another gang, so he was part of that gang. But  
03:45:01 18 certainly no gang activity as we've seen in this building.

03:45:05 19 THE COURT: Now, it says on line 308 that he was a  
03:45:09 20 member of the Gangster Disciples street gang between 1986 and  
03:45:14 21 1992, and that he did so simply because that was the group in  
03:45:18 22 the neighborhood.

03:45:19 23 MR. LIPUMA: Judge, he did say that. I was there.  
03:45:23 24 Ms. Groth -- Vernon volunteered that. It wasn't like the  
03:45:27 25 probation officer had to investigate that. He volunteered

03:45:30 1 that. But he also indicated it was a matter of being in that  
03:45:33 2 neighborhood, that was the reason why -- you were either in  
03:45:37 3 that neighborhood and a member of the gang -- I mean, we've  
03:45:40 4 heard that so many times. But he certainly doesn't have any  
03:45:45 5 gang activity in at least the last seventeen years or more.

03:45:50 6 Judge, for all these reasons, you indicated this was  
03:45:55 7 a unique trial. I think Mr. Kubiowski might agree with  
03:45:59 8 that. I certainly agree with that.

03:46:02 9 We think fifteen years, Judge, is more than  
03:46:05 10 sufficient, and that's what we would respectfully ask the  
03:46:08 11 Court to impose.

03:46:09 12 THE COURT: Okay. Anything else, Mr. Kubiowski,  
03:46:12 13 that you want to verify or reply to?

03:46:15 14 MR. KUBIATOWSKI: Just for the record, your Honor, I  
03:46:18 15 understand that the fact -- or concerning the nature of the  
03:46:20 16 circumstances of the offense is broad. But I don't believe it  
03:46:22 17 includes defense counsel's reassessment of the credibility of  
03:46:28 18 certain law enforcement testimony, or how the evidence was  
03:46:32 19 presented or the value attached to that evidence.

03:46:37 20 That was the province of the jury, and I don't  
03:46:41 21 believe that is part of the Court's consideration. I could be  
03:46:46 22 wrong. I haven't seen that kind of reassessment argued during  
03:46:49 23 the course of a sentencing for -- I don't believe it qualifies  
03:46:52 24 as the nature and circumstances of the offense.

03:46:54 25 THE COURT: I think that's -- well, that is why I

03:46:57 1 precisely said that the jury did find, after effective  
03:47:03 2 cross-examination, that the agent's statement was credible  
03:47:06 3 enough to convict. So they had, if we would say, the bumps  
03:47:10 4 and bruises of the investigation, whether that was negligence  
03:47:14 5 or not an effective way of going about maintaining the  
03:47:18 6 documents, they had that at their disposal and they reached  
03:47:22 7 that. So I'm not taking that into account as a nature and  
03:47:27 8 circumstance of the offense. The broader picture as to what  
03:47:30 9 the offense involved being a sting operation, I think, is a  
03:47:34 10 relevant factor when we look at it in light of Mr. Williams'  
03:47:40 11 criminal history.

03:47:41 12 MR. KUBIATOWSKI: Which I understand, your Honor.

03:47:43 13 THE COURT: Okay.

03:47:43 14 MR. KUBIATOWSKI: That was my only point of  
03:47:44 15 clarification.

03:47:45 16 THE COURT: Okay. All right. Anything from you,  
03:47:47 17 Mr. Lipuma --

03:47:47 18 MR. LIPUMA: No, your Honor.

03:47:48 19 THE COURT: -- before I ask Mr. Williams to speak?

03:47:50 20 Sir, do you have anything you want to say to the  
03:47:52 21 Court before I testify -- excuse me -- before I sentence you?  
03:47:57 22 And if you could just move over to the microphone, I'd  
03:47:59 23 appreciate it.

03:47:59 24 - - -

03:48:02 25 **ALLOCATION**

03:48:02 1 THE DEFENDANT: Your Honor, I just want to say, you  
03:48:04 2 know, I'm sorry for all this having happened. You know,  
03:48:07 3 that's basically is -- because I don't know where my mind was  
03:48:10 4 at the time. And I'm just sorry for everything.

03:48:13 5 THE COURT: Okay. Thank you, sir.

03:48:13 6 - - -

03:48:17 7 SENTENCING

03:48:17 8 THE COURT: All right. We start out with a  
03:48:23 9 235-to-293 guideline range, plus a 60-month mandatory sentence  
03:48:30 10 for the gun conviction. And when we look at the 3553 factors,  
03:48:36 11 then I need to take into account the nature and circumstances  
03:48:39 12 of the offense and the history and characteristics of the  
03:48:42 13 defendant.

03:48:43 14 Similarly to the previous sentencing of your  
03:48:47 15 codefendant, I find it troubling that the criminal history  
03:48:56 16 that you have does not comport with the level of the crime  
03:49:01 17 that was created for you to participate in.

03:49:04 18 And I specifically refer to your criminal history  
03:49:08 19 involving the burglary conviction, which was in 1997, which  
03:49:20 20 showed that you entered a discount supply store and were found  
03:49:24 21 hiding in the basement with money taken from the cash  
03:49:29 22 register; a forgery conviction involving a \$387 check from a  
03:49:34 23 stolen purse; and another burglary conviction involving the  
03:49:43 24 store located in Maywood where the front door glass was kicked  
03:49:47 25 in and you fled on foot.

03:49:51 1 Those are the convictions which led you to be here as  
03:49:55 2 a criminal history category V, and because you were on parole  
03:50:01 3 for that last conviction, it shows, as Mr. Kubiowski says,  
03:50:06 4 someone who has not learned to rehabilitate.

03:50:09 5 But those are inconsistent with someone who would  
03:50:14 6 participate in a 15-to-20-kilo strong-arm robbery where people  
03:50:20 7 were discussed to be tied up, and that kind of drugs -- that  
03:50:28 8 kind and level of drugs were to be taken.

03:50:30 9 There's no drug dealing in the background that I can  
03:50:32 10 see in your criminal history. That's inconsistent -- you have  
03:50:38 11 possession of drugs from when you were in your early twenties,  
03:50:42 12 all of which were dismissed in the state court. So it's  
03:50:45 13 difficult for me to understand what occurred there, but none  
03:50:50 14 of the possession of controlled substances charges that you  
03:50:55 15 were charged with when you were 23 and 24 years old sufficed  
03:51:00 16 to bring you to a conviction on those.

03:51:03 17 And so the nature and circumstances of the offense,  
03:51:06 18 again, are that there's no cocaine, no robbery but for the  
03:51:11 19 fact that it was one that the Government created for you to  
03:51:16 20 participate in.

03:51:17 21 Now, you participated in it knowing that you hadn't  
03:51:20 22 had that criminal history. You did state on the tape that you  
03:51:25 23 were willing to do so. I do find it to be an interesting  
03:51:28 24 anomaly that during the conversations you were permitted to  
03:51:33 25 bring a gun and encouraged to bring a gun, and you didn't



03:51:37 1 bring a gun and you're being held responsible, of course,  
03:51:40 2 under the law for the gun that your codefendant brought. But  
03:51:43 3 there's no criminal history here that shows that you ever  
03:51:48 4 brought a gun to any of those robberies that I just set forth.

03:51:52 5 So I don't find that you would recidivate and commit  
03:51:57 6 another crime to the level of the one that the ATF had  
03:52:01 7 created. I don't see that you're going to be dealing in  
03:52:03 8 massive quantities of cocaine, that you're going to be  
03:52:06 9 burglarizing with a weapon, when you never had done so in the  
03:52:10 10 past, and that you didn't bring a weapon with you on this  
03:52:14 11 occasion.

03:52:14 12 So as far as the circumstances of the offense are  
03:52:16 13 concerned, they are to a degree of criminality that you hadn't  
03:52:24 14 participated in in the past. And when I look at your criminal  
03:52:29 15 history, I am satisfied that I would not need to deter you  
03:52:33 16 from committing that type of crime in the future.

03:52:38 17 On the other hand, I do see that you cannot stay  
03:52:42 18 clear of the law. The fact that you were still on parole for  
03:52:45 19 this offense and willingly entered into this agreement, and  
03:52:53 20 even if it was last minute and even if it was organized by  
03:52:56 21 others.

03:52:57 22 So the Court has to take into account that I need to  
03:53:00 23 protect the public from further crimes by you. I don't think  
03:53:04 24 those crimes would be cocaine stash house robberies, but I  
03:53:08 25 think that your attorney has adequately described you, that

03:53:12 1 you are living life on an installment plan, where you  
03:53:15 2 continually go back into prison based upon these other crimes.  
03:53:19 3 So when I balance the nature and circumstances of the  
03:53:22 4 offense with the seriousness of the -- or the history and  
03:53:25 5 characteristics of you, I find that a sufficient sentence for  
03:53:31 6 you is the fifteen years on the drugs, with the five years for  
03:53:35 7 the gun, which is -- excuse me -- the fifteen-year total, the  
03:53:41 8 ten years for the drugs and five years for the gun, so that  
03:53:44 9 you have a total sentence of fifteen years.

03:53:46 10 And I think that that is a sufficient sentence also  
03:53:50 11 based upon the fact that you're 41 years old and you're  
03:53:53 12 disabled. And I can't believe that at the age of 57 or 58,  
03:53:56 13 when you get out, that you'll have the ability to go hiding in  
03:53:59 14 basements or breaking in through -- kicking in glass doors any  
03:54:05 15 longer, when you're standing before me with your cane not even  
03:54:08 16 able to walk.

03:54:09 17 So that's a long significant sentence for a very bad  
03:54:13 18 decision made on the day to participate in this robbery. But  
03:54:18 19 the sentence is designed to send the message to others not to  
03:54:23 20 participate in such a robbery in the future, and I think that  
03:54:27 21 fifteen years is sufficient to give you the deterrent effect  
03:54:31 22 that you personally need as well as balancing the need for the  
03:54:37 23 public to know that this is a serious crime and that you  
03:54:39 24 should be deterred from committing any other types of crime.

03:54:42 25 So with that, my sentence will be ten years on the

03:54:48 1 drug count, which is -- or the robbery count, which is  
03:54:52 2 Count 1, the 60-month sentence, on Count 2, and then a  
03:55:00 3 supervised period of release of five years.

03:55:03 4 You will have a \$200 special assessment.

03:55:07 5 No fine or restitution.

03:55:09 6 You're going to participate in the DNA collection  
03:55:14 7 that's required.

03:55:15 8 And I am going to order both a mental health  
03:55:19 9 treatment program as well as a drug treatment program, because  
03:55:24 10 based upon what is set forth in the probation officer's  
03:55:27 11 report, I do think that the mental health treatment might be  
03:55:34 12 beneficial to you, based upon your history as a child, that in  
03:55:40 13 prison you can hopefully reach a healthier resolution of that.

03:55:44 14 I'm going to also require that you not possess a  
03:55:47 15 firearm or destructive device or commit any other federal,  
03:55:52 16 state, or local crime while you're on your supervised release.

03:55:55 17 During the drug aftercare treatment program, you may  
03:55:58 18 be required to give a urine test of up to 104 per year,  
03:56:03 19 depending on what the probation officer said.

03:56:04 20 You'll need to report to the Probation Office within  
03:56:10 21 72 hours of your release from prison.

03:56:13 22 And that brings me to your right to appeal. You have  
03:56:17 23 a right to appeal this sentence. You can do so within ten --  
03:56:23 24 you must do so within ten days of the entry of the judgment  
03:56:26 25 and commitment order in the case, and Mr. Lipuma can advise

03:56:30 1 you about your appellate rights.

03:56:32 2 Is there anything else I need to address?

03:56:35 3 MR. KUBIATOWSKI: Not from the Government, your  
03:56:35 4 Honor.

03:56:36 5 THE COURT: Okay.

03:56:36 6 MR. LIPUMA: Judge, if I may ask the Court, if the  
03:56:38 7 Court would recommend a designation to a facility as close to  
03:56:41 8 Chicago as possible.

03:56:42 9 THE COURT: Well, I can do that, but as you know with  
03:56:45 10 his criminal history, I don't know what that becomes.

03:56:47 11 MR. LIPUMA: Okay.

03:56:48 12 THE COURT: I would be happy to do that. It's going  
03:56:52 13 to -- the Bureau of Prisons figures that out as far as which  
03:56:54 14 one is available, and we'll see what they do.

03:56:57 15 MR. LIPUMA: Thank you, Judge.

03:56:57 16 THE COURT: Okay. Anything else?

03:56:58 17 MR. KUBIATOWSKI: Thank you, your Honor.

03:56:58 18 THE COURT: All right. Thank you.

03:57:05 19 MR. LIPUMA: Thank you, your Honor.

03:57:06 20 THE DEFENDANT: Thank you, your Honor.

03:57:07 21 THE COURT: Good luck to you, sir.

22 (Concluded at 3:57 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from  
the record of proceedings in the above-entitled matter.

/s/April M. Metzler, RPR, CRR, FCRR    November 16, 2009

April M. Metzler, RPR, CRR, FCRR    Date

Official Federal Court Reporter

For a copy of this transcript, contact April Metzler, CRR  
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